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June 13, 2014

**VIA ELECTRONIC & US MAIL**

Ms. Jennifer LaPoma  
ATTN: Lower Passaic River Remedial Project Manager  
Emergency and Remedial Response Division  
U.S. EPA, Region 2  
290 Broadway, 20th Floor  
New York, New York 10007

**Re: Monthly Progress Report No. 21 – May 2014  
Lower Passaic River Study Area (LPRSA)  
River Mile 10.9 Removal Action  
CERCLA Docket No. 02-2012-2015**

Dear Ms. LaPoma:

*de maximis, inc.* is submitting this Monthly Progress Report for the above-captioned project on behalf of the Cooperating Parties Group (CPG) pursuant to the Administrative Settlement Agreement and Order on Consent for Removal Action (Settlement Agreement or AOC). The Progress Report satisfies the reporting requirements of Paragraph 28 of the River Mile (RM) 10.9 Settlement Agreement.

**(a) Actions which have been taken to comply with this Settlement Agreement during the month of May, 2014.**

**Meetings/Conference Calls**

- On May 7, EPA and CPG held a teleconference to review progress in capping.
- On May 14, EPA and CPG held a teleconference to review progress in capping.
- On May 21, EPA and CPG held a teleconference to review progress in capping.
- On May 28, EPA and CPG held a teleconference to review progress in capping.

**Correspondence**

- On May 5, 7, 9, 12, 13, 16, 22, 23, 24 and 27 CPG informed the counties and all bridge operators of its requests (and modifications to those requests) for bridge openings.
- On May 6, 13, 20 and 27, CPG forwarded the following to EPA: (1) summaries of the prior week's teleconferences, (2) status reports of the prior weeks' field operations, and (3) draft agendas for the weekly teleconferences.
- On May 5, CPG provided EPA with the armor stone surveys.
- On May 7, EPA approved the armor stone survey and granted permission to proceed with deployment of the habitat layer. Additionally, EPA informed CPG that Tierra is planning to conduct a pipeline survey within the no dredge zone during the first half of June.
- On May 9, EPA agreed that two lifts of sand is acceptable quantity of sand to complete the habitat layer.

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- On May 9, CPG provided EPA with a Force Majeure letter related to the inoperable condition of the Jackson Street Bridge.
- On May 9, EPA responded to the CPG Force Majeure letter, EPA accepted the Force Majeure related to the Jackson Street Bridge failure.
- On May 9, Essex County notified the CPG that the Jackson Street Bridge would be operable on May 12.
- On May 12, CPG provided EPA with the "Final Armor Layer Survey Technical Memorandum for RM 10.9" as requested by EPA.
- On May 1 and 13, EPA approved posting of weekly status reports for the [www.rm109.com](http://www.rm109.com) website.
- On May 12, 16, 20 and 25, CPG provided updated RM 10.9 production schedules.
- On May 15, CPG provided the RM 10.9 Removal Action Progress Report for April 2014.
- On May 15, CPG responded to the EPA's response to the CPG March 31, 2014 comments related to the RM 10.9 Removal Action Long Term Monitoring Plan.
- On May 20, EPA requested that the following names be added to the distribution list for future submissions: Reyhan Mehran (NOAA) and Clay Stern (USFWS).
- On May 22, EPA responded to the CPG letter of May 15, related to the RM 10.9 Removal Action Long Term Monitoring Plan. EPA stated that they will consider that the CPG would like to invoke dispute resolution as provided by the Administrative Settlement Agreement and Order of Consent for Removal Action. EPA further provided the Settling Parties to submit the LTMP by June 2, 2014.
- On May 22, EPA responded to the "Final Armor Layer Survey Technical Memorandum for RM 10.9. EPA requested that a settlement survey component be added to the cap long term monitoring plan. Additionally, EPA requested the CPG submit the raw survey data used to generate the armor layer survey.
- Throughout May, CPG kept EPA's On-Scene Coordinator and the CDM field oversight personnel informed of daily progress and daily modifications to the field placement schedule.
- On May 29, EPA approved the completion of the habitat layer of the RM 10.9 cap and granted permission for GLDD to demobilize equipment.

### **Work**

- The habitat layer was installed over the armor stone layer. Habitat layer deployment started on May 7 and was completed on May 29.
- GLDD completed the removal of all equipment on May 30.

### **(b) Results of Sampling and Tests**

- No data packages associated with the RM 10.9 Removal Action were submitted in May.

### **(c) Work planned for the next two months with schedules relating to the overall project schedule for design completion and construction**

- CPG will draft a Final Report.

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**(d) Problems encountered and anticipated problems, actual or anticipated delays, and solutions developed and implemented to address actual or anticipated problems or delays**

- On May 6, GLDD filed an “Urgent Marine Notice Complaint Form” with the US Coast Guard related to the inoperable condition of the Jackson Street Bridge. The Jackson Street Bridge was reopened for marine traffic on May 12. On April 29 Essex County notified the CPG that the Jackson Street Bridge was inoperable and that they had a contractor evaluating the problem. This constitutes a Force Majeure pursuant to the AOC and, as with previous bridge failures, these events are clearly beyond the control of the CPG to remedy. The Jackson Street Bridge was not repaired prior to the end of April.
- The CPG believes that only physical monitoring is sufficient and required to monitor the effectiveness and integrity of the cap. If the RM 10.9 cap is similar and consistent to that implemented as any final remedy for the LPRSA, then the need for long-term chemical monitoring for the cap should be determined as part of the overall LPRSA long-term monitoring plan and regular 5 year reviews. This appears to be the rationale developed for the Hudson River and Onondaga Lake and should apply to the RM 10.9 Removal Action as well.

The RM 10.9 Removal Action was implemented to reduce the risk associated with the direct contact exposure to sediments by people due to elevated concentrations of COPCs in RM 10.9 surface sediments. The cap physically prevents direct contact to underlying sediment by river users. As an added benefit an active layer was included to further enhance the protectiveness of the cap. In the near term, the surface of the cap is likely to be recontaminated by sediment deposition which is likely to be in the low 100s of ppt of TCDD – two orders of magnitude less than the pre-dredge surface of the RM 10.9 Removal Area. The CPG does not agree with Region 2’s rationale for an aggressive short-term chemical monitoring program of the RM 10.9 cap. It is unnecessary to evaluate the short-term effectiveness of the cap to chemically isolate COPCs when the primary goal of the Removal Action and the construction of the cap were to remove and reduce the direct contact risk due to the presence of elevated concentrations in the surface sediment.

On the Hudson River, Region 2 requires monitoring of the Phase 2 engineered caps for physical integrity and chemical isolation effectiveness. The chemical isolation effectiveness monitoring will occur in designated sentinel areas 10 years after completion of cap construction in those areas and then at 10-year intervals, or as soon as practical after a flood event exceeding the design recurrence interval for those caps. For Onondaga Lake, long-term monitoring of the cap includes routine physical and chemical monitoring which is anticipated to occur 5, 10, 20, and 30 years after construction begins. For the Lower Passaic River Study Area, EPA has required no chemical monitoring at the Lister Avenue Phase 1 Removal Action site. Region 2’s requirements for the RM 10.9 Removal Area are completely inconsistent with the chemical monitoring requirements for frequency and schedule established at other Region 2 capping sites such as the Hudson River and Onondaga Lake.

The CPG provided comments to Region 2 on March 31, 2014 in response to the Region’s January 24, 2014 comments on CPG’s draft QAPP Worksheet 9 (dated January 22, 2014).

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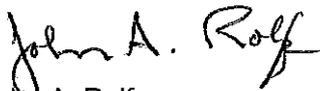
Region 2 and the CPG have initiated dispute resolution to resolve the differences on the scope of the RM 10.9 Long Term Monitoring Plan.

- The CPG strongly disagrees with the EPA's July 15, 2013 letter denying the Force Majeure condition outlined in CPG's June 29, 2013 letter. EPA's rationale for denial is inconsistent with terms and definitions in the AOC. Both the inoperability of the Bridge Street Bridge due to Hurricane Sandy and the repeated delays in the repaired motors being shipped and reinstalled - have been and continue to be clearly beyond the control of the CPG. Moreover, Hudson and Essex Counties failed to meet their obligations under Federal Regulations to properly maintain and operate their bridges and to provide proper notice of the status of their bridges to US Coast Guard, mariners and the general public. Finally, the CPG has voluntarily provided funds to the Counties to operate the bridges with no regulatory requirement to do so. As noted above it is the Counties obligation to ensure that their bridges are operating and ready to open upon notice. CPG has addressed this issue in its July 31, 2013 letter to EPA and to which the Region has not responded.
- There is still no resolution concerning the Tierra/Maxus/Occidental (TMO) UAO and their participation in the RM 10.9 Removal Action. As documented in the CPG's correspondence of July 27, 2012 and September 7, 2012, the offer from TMO was inadequate and provided no meaningful value to the RM 10.9 Removal Action.

If you have any questions, please contact Bill Potter, Rob Law or me at (908) 735-9315.

Very truly yours,

**de maximis, inc.**



John A. Rolfe  
RM 10.9 Removal Action Project Coordinator

cc: Pat Hick, EPA Office of Regional Counsel  
William Hyatt, CPG Coordinating Counsel  
Jay Nickerson, NJDEP  
Frank Tsang, CDM-Smith  
Elizabeth Franklin, US Army Corps of Engineers  
Reyhan Mehran, NOAA  
Clay Stern, FWS